

REMARKS

New Claim 20 recites a food or drink comprising "at least one yeast belonging to *Kluyveromyces*." New Claim 20 is supported by Claim 3 as filed. No new matter is believed to be added by entry of new Claim 20. Applicants respectfully submit that new Claim 20, like Claim 3, should be examined with Group IV.

The Office has required restriction in the present application as follows:

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| Group I: | Claim 1, drawn to the first product which is a yeast belonging to <i>Issatchenkia</i> ; |
| Group II: | Claim 1, drawn to the second product which is a yeast belonging to <i>Hanseniaspora</i> ; |
| Group III: | Claim 1, drawn to the third product which is a yeast belonging to <i>Kloeckera</i> ; |
| Group IV: | Claim 1, drawn to the fourth product which is a yeast belonging to <i>Kluyveromyces</i> ; |
| Group V: | Claim 1, drawn to the fifth product which is a yeast belonging to <i>Pichia</i> ; |
| Group VI: | Claim 1, drawn to the sixth product which is a yeast belonging to <i>Torulaspora</i> ; |
| Group VII: | Claim 4, drawn to a secondary bile acid production inhibitor containing a yeast; |
| Group VIII: | Claim 5, drawn to a product which is a secondary bile acid production inhibitor containing a yeast belonging to <i>Issatchenkia</i> ; |

- Group IX: Claim 5, drawn to a product which is a secondary bile acid production inhibitor containing a yeast belonging to Hanseniaspora;
- Group X: Claim 5, drawn to a product which is a yeast belonging to Kloeckera;
- Group XI: Claim 5, drawn to a product which is a yeast belonging to Kluyveromyces;
- Group XII: Claim 5, drawn to a product which is a yeast belonging to Pichia;
- Group XIII: Claim 5, drawn to a product which is a yeast belonging to Torulaspora;
- Group XIV: Claim 7, drawn to a food or drink containing a secondary bile acid production inhibitor containing yeast;
- Group XV: Claim 7, drawn to a food or drink containing a secondary bile acid production inhibitor containing a yeast Issatchenkia;
- Group XVI: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to Hanseniaspora;
- Group XVII: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to Kloeckera;
- Group XVIII: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to Kluyveromyces;

- Group XIX: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Pichia*;
- Group XX: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Torulaspora*;
- Group XXI: Claim 17, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast;
- Group XXII: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast *Issatchenkia*;
- Group XXIII: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast *Hanseniaspora*;
- Group XXIV: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast *Kloeckera*;
- Group XXV: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast *Kluyveromyces*;
- Group XXVI: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast *Pichia*;

- Group XXVII: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast *Torulaspora*;
- Group XXVIII: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering more than one yeast;
- Group XXIX: Claim 6, drawn to a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Saccharomyces*;
- Group XXX: Claim 6, drawn to a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Hyphopichia*;
- Group XXXI: Claim 6, drawn to a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Candida*;
- Group XXXII: Claim 6, drawn to a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Zygosaccharomyces*;
- Group XXXIII: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Saccharomyces*;
- Group XXXIV: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to *Candida*;

- Group XXXV: Claim 7, drawn to a food or drink containing a product which is a secondary bile acid production inhibitor containing a yeast belonging to Zygosaccharomyces;
- Group XXXVI: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast belonging to Saccharomyces;
- Group XXXVII: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast belonging to Candida;
- Group XXXVIII: Claim 18, drawn to a treatment method for inhibiting a secondary bile acid production, comprising administering a yeast belonging to Zygosaccharomyces.

The Examiner has indicated that Claims 2, 3, 15, and 16 will be examined with Group IV.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. MPEP, 803.

Applicants respectfully traverse the requirement for restriction on the grounds that the Office has not provided adequate reasons and/or examples to support a conclusion of patentable distinctness between the identified groups.

The Examiner, citing PCT Rule 13.1, contends that Groups I-XXXVIII do not relate to a single general inventive concept because they lack the same or corresponding special technical features. However, Applicants traverse the Restriction Requirement on the grounds that the Office has not applied the same standard of unity of invention as the International Preliminary Examination Authority. The Authority did not take the position that unity of

invention was lacking in the International application and examined *all* claims together (see the International Preliminary Examination Report appended herewith). Applicants note that PCT Article 27(1) states that no national law shall require compliance with requirements relating to the form and contents of the International application *different from or additional to* those which are provided for in the Patent Cooperation Treaty (PCT) and the Regulations.

In fact, Applicants point to Section V of the International Preliminary Examination Report, in which the International Authority found the present invention to possess novelty, as well as inventive step. Applicants respectfully submit that the Examiner has, in fact, required compliance in a manner different from those of the PCT.

Furthermore, Applicants fail to understand how the claims could reasonably lack unity of invention, when each of the claims recite cholesterol lowering compositions comprising "yeast". For example, Claim 1 has been restricted into Groups I-VI, each directed to a different type of yeast. Applicants do not make any statement in regard to the patentable distinctness of these groups, but respectfully submit that each of these Groups reasonably share a common general invention concept (i.e., a cholesterol lowering agent "containing, as an active ingredient, at least one yeast"). Accordingly, restriction is improper, and the requirement should be withdrawn.

Moreover, MPEP §803 states:

"If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions."

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office, since all of the claims relate to a relatively small number of specific species of yeast.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

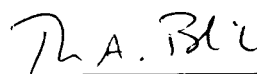
Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully submitted,

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